

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

02 APR 30 AM 11:42

U.S. DISTRICT COURT
N.D. OF ALABAMA

KENNETH MEEKS,

Plaintiff,

vs.

**BAYER CORPORATION, LUCINDA MAXWELL,
WAL-MART STORES, INC., WAL-MART STORES
EAST, INC.,; and WAL-MART STORES EAST, LP,**

Defendants.

Civil Action Number
02-C-0569-W

ENTERED

APR 30 2002

MEMORANDUM OPINION ON REMAND

In this case removed to this Court on grounds of diversity, to prove fraudulent joinder Defendants must carry the heavy burden of showing that there is no possibility that Plaintiff can prove a cause of action against the non-diverse Defendant Lucinda Maxwell.

Maxwell is the manager of the Defendants' Wal Mart store from which Plaintiff purchased the allegedly defective product. Plaintiff alleges that she is acquainted with Maxwell in their community; that Maxwell selected and recommended the product; that she relied on Maxwell's selection and recommendation because of Maxwell's superior knowledge and expertise; and that in reliance on Maxwell's recommendation, she purchased the defective product. Maxwell denies that she made any selection or recommendation to Plaintiff concerning the product; but for purposes of the fraudulent joinder issue, the Court will credit Plaintiff's version of the facts as incorporated in her affidavit.

On consideration of Plaintiff's affidavit in light of the allegations of the complaint, it cannot be reasonably concluded that under the laws of Alabama, there is no possibility that

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Plaintiff can prove a fraud/misrepresentation cause of action against Maxwell.

Defendant has thus failed to prove fraudulent joinder. Therefore, the Motion to Remand is due to be granted. By separate order, it will be done.

Done this 29th day of April, 2002.

A handwritten signature in black ink, appearing to read "U.W. Clemon", written over a horizontal line.

Chief United States District Judge
U.W. Clemon